

BORA LASKIN LAW LIBRARY



3 1761 10631478 4

Storage

KF

Cases and materials on the law of  
remedies. Prelim. ed.

9010

A7

S46

1986

v.2

Storage

KF

9010

A7

S46

1986

v.2



LAW LIBRARY

SEP 23 1986

FACULTY OF LAW  
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY  
UNIVERSITY OF TORONTO

**CASES AND MATERIALS**  
**ON**  
**REMEDIES**

Volume II

Equitable Remedies

J. Berryman  
J. Cassels  
T. Cromwell  
D. Mullan  
S. Sadinsky  
R. Sharpe  
S. Waddams

September 1986

## Table of Contents

### Volume II Equitable Remedies

#### 1. Permanent Injunctions

A. Introduction.....	473
B. Quia Timet Injunctions.....	476
<u>Fletcher v. Bealy</u> .....	477
Notes and Questions.....	483
<u>Hooper v. Rodgers</u> .....	484
Notes and Questions.....	487
C. Mandatory Injunctions.....	487
<u>Redland Bricks v. Morris</u> .....	488
Notes and Questions.....	492
D. Injunctions to Protect Property Interests	
i) Introduction.....	493
ii) Trespass.....	494
<u>Goodson v. Richardson</u> .....	495
Notes and Questions.....	498
<u>Wollerton and Wilson Ltd. v. Richard Constain Ltd.</u> .....	501
Notes and Questions.....	505
<u>John Trenberth Ltd. v. National Westminster Bank Ltd.</u> .....	508
<u>Lewvest Ltd. v. Scotia Towers Ltd.</u> .....	512
Notes and Questions.....	514
<u>Post-Judgment Bargaining: Compensation or Extortion?</u> .....	516
<u>Colls v. Home Colonial Stores Ltd.</u> .....	516
<u>Isenberg v. East India House Estate Co. Ltd.</u> ....	517
iii) Alternatives to Injunctive Relief.....	520
iv) Nuisance.....	522
<u>Miller v. Jackson</u> .....	523
Notes and Questions.....	531
R.J. Sharpe, <u>Injunctions and Specific Performance</u> .....	532
<u>Boomer v. Atlantic Cement Co. Ltd.</u> .....	538
Notes and Questions.....	543
<u>Spur Industries Inc. v. Del E. Webb Development Co.</u> .....	546
Notes and Questions.....	550
Domestic Violence in the Home.....	551



E.	Criminal Equity: Injunctions to Protect Public Rights.....	552
i)	The Role of the Attorney General and the Courts.....	552
	<u>Gouriet v. Union of Postal Workers</u> .....	553
	<u>A.G. Alta v. Plantation Indoor Plants</u> .....	556
	Notes and Questions.....	561
	<u>Re British Columbia Government Employees' Union</u> .....	564
	<u>B.C. Labour Code ss. 31,32,73</u> .....	575
	Notes and Questions.....	577
	<u>A.G.B.C. v. Couillard</u> .....	578
	Notes and Questions.....	584
	<u>A.G.N.S. v. Beaver</u> .....	585
ii)	The Role of the Individual: Standing.....	593
	<u>Gouriet v. Union of Postal Workers</u> .....	594
	Notes and Questions.....	598
	<u>Ex Parte Island Records Ltd.</u> .....	600
2.	Interlocutory Injunctions	
A.	Introduction.....	607
i)	Litigation Management.....	607
ii)	Balancing Interests.....	608
iii)	Judicial Administration.....	608
B.	Terminology.....	609
C.	Accessibility Thresholds and Irreparable Harm.....	609
G.	Hammond, "Interlocutory Injunctions: Time for a New Model".....	610
	<u>American Cyanamid v. Ethicon</u> .....	612
	Notes and Questions.....	618
E.	Gertner, <u>Studies in Civil Procedure</u> .....	622
	<u>Yule Inc. v. Atlantic Pizza Delight Franchise</u> .....	623
	Notes and Questions.....	629
	<u>Cayne v. Global Natural Resources</u> .....	633
	<u>C-Cure Chemical Co. Inc. v. Olympia and York Developments Ltd.</u> .....	633
	<u>Carlton Realty Co. Ltd. v. Maple Leaf Mills Ltd.</u> ....	634


Irreparable Harm.....	635
Fiss, <u>The Civil Rights Injunction</u> .....	635
<u>Hunt v. Board of Governors of Fanshawe College</u> .....	636
<u>Municipality of Metropolitan Toronto v. Danforth Hotel</u> .....	640
D. Undertakings.....	646
Ontario Rules of Civil Procedure.....	646
<u>Viewager Construction Co. v. Rush &amp; Thompkins Construction Ltd.</u> .....	646
Notes.....	648
E. Ex Parte Applications.....	650
Provincial Rules of Court.....	650
<u>Griffin Steel Foundries Ltd. v. Canadian Association of Industrial, Mechanical and Allied Workers</u> ....	650
F. Interlocutory Mandatory Injunction.....	652
<u>Prairie Hospitality v. Renard Hospitality</u> .....	652
<u>Cantol Ltd. v. Brodi Chemicals Ltd.</u> .....	656
<u>Steel Art Co. Ltd. v. Hrivnak</u> .....	662
G. Interlocutory Injunctions in Patent Action.....	665
H. Interlocutory Injunctions in Labour Disputes.....	666
Arthurs, Carter and Glasbeek, <u>Labour Law and Industrial Relations in Canada</u> .....	666
<u>Courts of Justice Act</u> .....	668
<u>Blackstone Industrial Products Ltd. v. Parsons</u> .....	669
<u>Alex Henry &amp; Sons Ltd. v. Gale</u> .....	672
<u>Consolidated Bathurst Packaging Ltd. v. Canadian Paperworkers Union Local 343</u> .....	675
Notes and Questions.....	678
I. Interlocutory Injunctions in Defamation Actions....	679
<u>Canada Metal Co. Ltd. v. Canadian Broadcasting Corp.</u> .....	679
<u>Canada Metal Co. Ltd. v. Canadian Broadcasting Corp. (No. 2)</u> .....	686
<u>Canadian Tire Corp. Ltd. v. Desmond</u> .....	687
Notes.....	689
J. Interlocutory Injunctions to Restrain the Dis- position of Assets Pending Trial.....	691
(i) The Mareva Injunction.....	691

<u>Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.</u> .....	691
<u>Aetna Financial Services Ltd. v. Feigelman</u> .....	693
Notes and Questions.....	710
Mareva Injunctions and Third Parties.....	711
<u>Z Ltd. v. A-Z and AA-LL Ltd</u> .....	711
Notes and Questions.....	728
An interesting use of a Mareva type injunction	
<u>West Mercia Constabulary v. Wagener</u> .....	730
Notes.....	733
(ii) Anton Piller Injunctions.....	735
<u>Anton Piller K.G. v. Manufacturing Processes Ltd.</u> .....	735
Berryman, "Anton Piller Orders: A Canadian Common Law Approach".....	738
Jurisdictional Base.....	740
Procedural Safeguards and Related Problems.....	741
<u>Bardeau (Ltd.) v. Crown Food Services Equipment Ltd.</u> .....	746
Notes.....	747
Paciocco, "Anton Piller Orders: Facing the Threat of the Privilege Against Self-incrimination".....	748
Berryman, "Anton Piller Injunctions: An Update".....	749
3. Specific Performance	
A. General Principles .....	751
Farnsworth, "Legal Remedies for Breach of Contract".....	751
A. Schwartz, "The Case for Specific Performance....	755
Notes.....	758
B. Sale of Goods and Chattels.....	759
i) General	
<u>Falcke v. Gray</u> .....	759
ii) Third Parties.....	762
<u>Canadian Long Island v. Irving Industries</u> .....	763
iii) Inadequacy of Consideration.....	765
iv) The Sale of Goods Act and Replevin.....	766
v) Long Term Contracts for the Supply of Goods or Services.....	770

<u>Dominion Iron &amp; Steel Co. v. Dominion Coal Co.</u> .....	770
Notes.....	775
<u>Ryan v. Mutual Tontine Westminster Chambers Association</u> .....	776
Notes.....	781
<u>Tanenbaum v. W.J. Bell Paper Co. Ltd.</u> .....	782
Notes.....	789
C. Personal Service Contracts.....	790
<u>Giles &amp; Co. v. Morris</u> .....	790
Notes.....	794
<u>Lumley v. Wagner</u> .....	795
<u>Warner Bros. Pictures Incorporated v. Nelson</u> .....	796
Milner's Cases and Materials on Contracts.....	804
<u>Detroit Football Co. v. Dublinski</u> .....	809
<u>Combines Investigation Act</u> .....	811
Standard Player Contract.....	812
<u>Page One Records, Ltd. v. Britton</u> .....	817
<u>Hill v. C.A. Parsons &amp; Co. Ltd.</u> .....	822
Notes.....	831
<u>Stevenson v. Air Canada</u> .....	835
<u>Instone v. A Schroeder Music Publishing Co. Ltd.</u> ...	837
<u>A Schroeder Music Publishing Co. Ltd. v. Macaulay</u> .....	840
D. Land Contracts .....	844
(i) General.....	844
<u>McNabb v. Smith</u> .....	846
<u>Bashir v. Koper</u> .....	848
<u>Verrall v. Great Yarmouth Borough Council</u> ....	849
(ii) Part Performance.....	852
<u>Statute of Frauds</u> .....	852
<u>Sale of Goods Act</u> .....	853
<u>Maddison v. Alderson</u> .....	854
<u>Rawlinson v. Ames</u> .....	862



<u>Johnson v. The Canada Company</u> .....	864
<u>Delgman v. Guaranty Trust Co. of Canada</u> <u>and Constantineau</u> .....	865
<u>Thompson v. Guarantee Trust Co</u> .....	867
<u>Lensen v. Lensen</u> .....	873
<u>Toombs v. Mueller</u> .....	877
(iii) Payment of Money.....	885
<u>Starlite Variety Stores Ltd. v. Cloverlawn</u> <u>Investments Ltd</u> .....	885
<u>Currie v. Thomas</u> .....	886
<u>Lavery v. Pursell</u> .....	890
<u>Carter v. Irving Oil Co. Ltd</u> .....	892
E. Discretionary Reasons for the Denial of Relief.....	895
i) "Equity Will Not Aid a Volunteer".....	895
<u>Riches v. Burns</u> .....	896
ii) Hardship.....	897
<u>Patel v. Ali</u> .....	897
iii) The "Clean Hands" Doctrine".....	900
<u>Cerilli v. Klodt</u> .....	900
iv) Lâches.....	901
J.T. Farrand, "Speedy Performance".....	901
<u>Grauer Estate v. Government of Canada</u> .....	903
<u>Kloepfer Wholesale Hardware &amp; Automotive Co.</u> <u>v. Roy</u> .....	904
v) Mutuality.....	906
Hanbury, <u>Modern Equity</u> (8th ed) at pp. 547-50.	908
<u>Eastern Counties Railway Co. v. Hawkes</u> .....	908
<u>Price v. Strange</u> .....	909
<u>Beswick v. Beswick</u> (C.A.).....	923
<u>Beswick v. Beswick</u> (H.L.).....	924
Waddams, <u>The Law of Damages</u> at pp. 316-18.....	929
<u>Waugh, Bowers, Davenport, Pollard et al. v.</u> <u>Slavik and Outhet</u> .....	930
F. Specific Performance with an Abatement in the Purchase Price.....	931
<u>Le Mesurier v. Andrus</u> .....	933



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto



G.	Election of Remedies.....	936
	<u>Johnson v. Agnew</u> .....	937
	<u>Dynamic Transport Ltd. v. O.K. Detailing Ltd</u> .....	943
	<u>Carma Developers v. Groveridge Imperial Properties</u> ..	945
	<u>Beauchamp v. Coastal Corp. et. al</u> .....	949
H.	Equitable Damages.....	953
	<u>Lord Cairns' Act, s.2</u> .....	953
	J.A. Jolowicz, "Damages in Equity - A Study of <u>Lord Cairns' Act</u> ".....	954
	<u>Judicature Act, R.S.O. 1980, c. 223, s.21</u> .....	958
	<u>Courts of Justice Act, S.O. 1984, c.11, s.112</u> .....	958
	<u>Dobson v. Winton &amp; Robbins Ltd</u> .....	958
	<u>Price v. Strange</u> .....	962
I.	Injunctions to Restrain Breaches of Contract.....	965
	<u>Doherty v. Allman and Dowden</u> .....	965
	<u>Fothergill v. Rowland</u> .....	970
	<u>Metropolitan Electric Supply Co. Limited v. Ginder</u> ..	974
	<u>Thomas Borthwick &amp; Sons (Australasia) Ltd. v.</u> <u>South Otago Freezing Co. Ltd</u> .....	977
	<u>S.B.I. Management Ltd. v. Wabush (Carol) Co-Op</u> <u>Society Ltd</u> .....	982
J.	Remedy Stipulation.....	986
	<u>J.G. Collins Insurance Agencies Limited v. Elsley's</u> <u>Estate</u> .....	986

#### CHARTER REMEDIES

A.	Introduction.....	994
B.	Damages as a Charter Remedy.....	1000
	<u>Crossman v. The Queen</u> .....	1000
C.	Injunctions as a Charter Remedy.....	1003
	i) Injunctions and Crown Immunity.....	1003
	<u>Van Mulligen v. Saskatchewan Housing</u> <u>Corporation</u> .....	1003
	ii) Interlocutory Injunctions.....	1005
	<u>Re A.G. Canada and Gould</u> .....	1005
	<u>Re Hardie and District of Summerland</u> .....	1009
	iii) Structural Injunctions.....	1013
	Sharpe, "Injunctions and the Charter".....	1013

